No. 9242

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WEST COAST LIFE INSURANCE COMPANY (a corporation), PACIFIC NATIONAL BANK OF SAN FRANCISCO (a national banking association), et al.,

Appellants,

vs.

MERCED IRRIGATION DISTRICT,

Appellee.

(And 3 Companion Cases)

REFERENCE AND ANSWER TO CITATION BY APPELLEES OF PEOPLES STATE BANK v. IMPERIAL IRRIGATION DISTRICT.

(Filed by Appellants Pursuant to Permission of the Court.)

BROBECK, PHLEGER & HARRISON,
Crocker Building,
San Francisco, California,

DAVID FREIDENRICH,
Stock Exchange Building,
San Francisco, California,

HUGH K. MCKEVITT,
Russ Building,
San Francisco, California,

W. COBURN COOK,
Berg Building,
Turlock, California,

CHASE, BARNES & CHASE,
Title Insurance Building,
Los Angeles, California,

CLARK, NICHOLS & ELTSE,
American Trust Company Building,
Berkeley, California,

PETER TUM SUDEN,
605 Market Street,
San Francisco, California,

CHAS. L. CHILDERS,
Bank of America Building,
El Centro, California,

Attorneys for the Appellants in the Four Companion Irrigation District Cases.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

Table of Authorities Cited

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The appellees have called the Court's attention to a decision of the Supreme Court of California rendered on April 16, 1940.

Peoples State Bank v. Imperial Irrigation Dist., 99 Cal. Dec. 317.

The case is cited in the following companion cases:

Lindsay-Strathmore Irrigation District, No. 9206;

Palo Verde Irrigation District, No. 9133;
James Irrigation District, No. 9352;
Merced Irrigation District, No. 9242.

Appellants in reply desire to cite on their behalf, and to make a limited comment on, the *State Bank* case.

I.

By oral argument and in their briefs, appellants have urged that all functions of an irrigation district are governmental and that Section 83 of the bankruptcy act can not apply; first, for lack of power in Congress and, secondly, by the very terms of Section 83, which prohibits the making of any order that affects governmental functions.

In the *State Bank* case the Supreme Court of California summarizes its rulings made since the *Bekins* case:

> "While the exact language of the El Camino case is not to be found in the cases just cited, the principle enunciated therein was firmly established in this state by the three cases cited in the opinion in the El Camino case and many others of this and other appellate courts of this state, many of which are to be found cited in the Whiteman v. Anderson-Cottonwood Irrigation District case, supra. All of these cases had been decided long prior to the time when the Bekins case was before the Supreme Court of the United States."

At the oral argument we cited the following cases on the point that in dealing with state law the United States Courts will follow the state, and for that purpose, will change their position if necessary. For the court's convenience these cases are cited:

Elmendorf v. Taylor, 10 Wheat 152, 6 L. ed. 289;

Chicago M. St. P. & P. R. Co. v. Risty, 276 U. S. 567, 72 L. ed. 703;

Green v. Lessees of Neal, 6 Pet. 291, 8 L. ed. 403, 405;

Fairfield v. Gallatin Co., 100 U. S. 47, 25 L. ed. 544, 546;

Wade v. Travis Co., 174 U. S. 499, 43 L. ed. 1060, 1064.

It must be taken as settled, that the property of a district and all its functions, including of course its taxing power, are governmental.

And we respectfully point out that Section 83 prohibits any order that may interfere at all with state governmental functions. It is not comprehensible that a preliminary or final order made under Section 83 is not for the purpose of affecting the district and its property.

The proceeding is not a judicial proceeding if it could be held that the orders and the decree permitted by Section 83 have effect simply by state consent.

II.

The cited case makes it apparent that from the state's point of view the voluntary bankruptcy proceeding must be consented to through a state enactment. It adopts the theory that there is at least enough danger to public debts to say the state agency must not destroy its debts if the state does not grant authority to take the remedy of federal bankruptcy.

This emphasizes the second ground on which the plea of *res judicata* is based. The *Chicot Drainage District* case settles any doubt as to whether in the prior proceedings the trial Court had jurisdiction. (It could hardly be argued that this Court had no jurisdiction.) Take the case of Merced District, which has copied its first plan. There was jurisdiction of the subject matter and of the parties in the proceeding under Section 80. Following the *Ashton* case, the prior holding was: (1) that enforcing the plan through federal decree was unauthorized interference with state sovereignty; that the bonds were immune from change; (2) *the state, by virtue of the contract clause, was powerless to give consent to impairing the bonds by federal bankruptcy.*

Section 80 said the plan could be put into effect, if found fair, upon a hearing as full and complete as that of Section 83.

It is earnestly urged that it is not comprehensible that if a plan does interfere with state sovereignty on March 31st it does not on April 1st. And if the state's consent is not a cure-all on March 31st it is not on

April 1st. It seems conceded that except for time of enforcement, the plan is the same and also that, from a legal point of view, it is the same. It does unto appellants and the district's debts just what it did originally.

Dated, May 3, 1940.

Respectfully submitted,

BROBECK, PHLEGER & HARRISON,
HUGH K. MCKEVITT,
CHASE, BARNES & CHASE,
PETER TUM SUDEN,
DAVID FREIDENRICH,
W. COBURN COOK,
CLARK, NICHOLS & ELTSE,
CHAS. L. CHILDERS,

Attorneys for the Appellants in the Four Companion Irrigation District Cases.